Illegal Occupation/Blockades: Strategic Enforcement Strategy

CONTEXT

Given the complexity of the ongoing multi-day occupations and blockades, safe resolution requires three levels of government to collaborate and exercise all appropriate authorities. To those ends, and in particular with respect to illegal activity involving commercial motor vehicles (trucks), Transport Canada offers a 'strategic enforcement strategy' for consideration by police services, local governments and transportation authorities of jurisdiction, cities and provinces. The strategy involves two key elements:

1. **Communications**

2. **Enforcement**

1. COMMUNICATIONS

Some individuals involved in illegal activity as part of the demonstrations do not believe they are doing anything illegal and hence there will be no negative consequences for such actions. The opposite is true. The consequences could be severe.

Immediately adopting this strategy and communicating clearly and directly to protestors (and to Canadians) about the illegal activities at play – and their impact – could incent compliance and "peel off" some trucks once their owners realize the potential economic costs and risks.

The sequencing of messaging is important. The plan is for the following key messages to be used by federal, provincial and municipal leaders when local law enforcement is ready to take action and when there is a reasonable prospect for enforcement soon, while giving protesters time to comply.

- Participating in lawful protests is a fundamental right in Canada. Breaking the law is not.

- Blockades are forcing some factories to down tools and send workers home. They are interfering with their ability to earn a living and access essential goods, including food from grocery stores. And they are making Canadians feel threatened in their homes and communities.

- Those involved in these blockades and breaking multiple provisions of each of the following:
    - municipal bylaws
    - The provincial Highway Traffic Act
    - The *Emergency Management and Civil Protection Act [Ontario only]*
    - The *Critical Infrastructure Defence Act [Alberta only]*
    - *Criminal Code of Canada.*

- Mischief, intimidation, obstructing police efforts, unnecessary use of horns, traffic infractions – these, and many other violations, are all punishable by law with fines in the thousands of dollars, permanent records of criminal convictions, and even jail time.

- The vehicles used in the blockades are subject to seizure and being impounded by the police

- Truck owners and operators should know that, by emergency order in the province of Ontario, can have their driver's licence, plate portion of the permit, or CVOR certificate immediately suspended or canceled. And that they may be subject to a fine of up to $100,000 or a year in jail – for each day the defy the law.

- Those in Alberta that are obstructing, interrupting or interfering with the operation of essential infrastructure in a manner that renders it inoperative can be fined from $1,000 to $25,000 and/or imprisonment. Further, anyone who aids, counsels or directs another person to commit an offence is also guilty of an offence.

- The Governments of Canada and the United States both have committed that anyone convicted of a criminal offence in relation to these blockades will not be able to cross the border. That means, Canadians will not be permitted to enter the U.S. and U.S. citizens will not be permitted to enter Canada.

- All of these convictions and fines [and forfeitures of assets] are subject to due process of course in the courts and by provincial regulatory authorities.

- To be clear: it is illegal to block highways and city streets and hold the livelihood of your fellow citizen ransom.

- Know this: The authorities will uphold the law are empowered to make arrests, lay charges and pursue enforcement action vigorously. Anyone who continues these illegal activities should consider themselves warned of the consequences.

- But we truly prefer it prefer it not come to that. So, we urge protestors to understand what is at stake. For the sake of your own safety, your economic well-being, and your ability to earn a livelihood with your commercial vehicle…. we ask you to go home now.

2. Enforcement (See Annex A for examples of infractions)

There is an opportunity to take decisive enforcement action where commercial trucks or other vehicles are involved as part of an unlawful protest/demonstration:

A. Police
    1. Issue tickets for each vehicle in contravention of provisions of applicable legislation and/or where drivers fail to comply with police requests/direction.
    2. Conduct surveillance, gather plate numbers and driver information of all vehicles involved and pass on to Provincial authorities.
    3. Tow, impound and in some cases seize implicated vehicles.

B. Provincial Transportation Authorities
    1. Support local law enforcement in managing vehicle flows by, for example, conducting roadside safety and emissions inspections with maximum penalties for infractions (e.g. fines or impounding vehicles)
    2. Use, or establishment, of provincial emergency legislation creating additional offences for illegal blockades as in Nova Scotia, Ontario and Alberta.
        i. For example, any person in Ontario that fail to comply with an order made under the emergency order or interferes with or obstructs any person in the exercise of a power or the performance of a duty, the fine is (a) individual not more than $100k or 1 year imprisonment, (b) corporation not more than $10M or 1 year imprisonment (c) individual who is a director or officer of a corporation not more than $500k or 1 year imprisonment. These are daily offense. Courts may increase the fine imposed on a person by an amount equal to the financial benefit that was acquired.
    3. Assess surveillance data to determine if further investigation/audit warranted related to the Commercial Vehicle Operators Registration.

C. Provincial Solicitor Generals / Attorneys General
    1. Provide direction to crown prosecutors to implement this Strategy through aggressive prosecutions and maximum penalties.

D. Federal, Provincial and Municipal Governments
    1. Maximize opportunities to aggressively publicize resulting prosecutions and sentencings to serve as a deterrent to future acts.
    2.

By way of additional context, it is important to note additional considerations for truck drivers beyond those that might apply to drivers of typical passenger vehicles, notably:

- *Class 1 (Class A) Driver Licence*
    - Licence can be suspended due to convictions for serious criminal code infractions related to driving (impaired driving, dangerous driving causing injury, death etc.)
    - Licence can also be suspended due to a large accumulation of demerit points

- *Commercial Motor Carrier Profile (e.g. referred to in Ontario as Commercial Vehicle Operator's Registration (CVOR) certificate)*

- CVOR is issued to the company (including an owner-operator) and under the certificate is a carrier safety rating
- Safety rating can be impacted by convictions related to driving/safety under the criminal code, highway traffic act, failed inspections, and other safety incidents.
- Each driver under a CVOR also has a driver abstract that is similarly impacted by the above and affects the carrier rating
- Carrier ratings and driver profiles/abstracts are available to the public and affect cost and availability of insurance.

Annex A: Examples of Possible Infractions

Typical Municipal Bylaws include the following (titles and punishments vary by municipality):

- Fire Routes - $5000 on conviction in Ottawa
- Idling
- Noise – fines range from $400 to $10,000 in Ottawa and up to $5000 in Windsor
- Traffic and Parking

Typical provincial highway legislation, such as the Ontario *Highway Traffic Act (HTA)** includes the following:

- Offense to block/park on roadways
- Offense to drive slowly as to impede traffic
- Commercial drivers may be subject to examination related to insurance and dangerous good at any time, with failure to comply representing a significant offense
- Commercial drivers may be subject to safety inspection, with failure to comply a serious offense

*Some sections of the HTA are superseded by municipal by-laws

The National Safety Code, governed by the federal/provincial/territorial Canadian Council of Motor Transport Administrators, establishes a national framework for the consistent application of violations to motor carrier profiles across jurisdictions.

Using Ontario's HTA as an example, the following is a small sample of violations under **provincial highway legislation** that can carry 'points' and can have negative implications for the driver and commercial motor carrier profiles (Ontario CVOR)

HTA 75: **Horn/bell violation** (1 CVOR)
HTA 132: **Unnecessary slow driving** (1 CVOR)
HTA 170: **Improper parking on roadway** (1 CVOR) **Improper parking interfering with traffic** (1 CVOR)
HTA 172: **Obstruct police duties** (3 CVOR)
HTA 216 (7) : **Fail to comply with direction of officer (during examination)** (5 CVOR)

Under the ***Criminal Code***, the following key offences may be applicable in the context of this strategic enforcement approach:

Intimidation CC s. 423(1)(g): 423 (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

…

(g) blocks or obstructs a highway.

Punishment

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

CC s. 2 defines "highways" as:

> **highway** means a road to which the public has the right of access, and includes bridges over which or tunnels through which a road passes

Mischief CC s. 403(1):

430 (1) Everyone commits mischief who wilfully

(a) destroys or damages property;

(b) renders property dangerous, useless, inoperative or ineffective;

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

Punishment

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.

(3) Every one who commits mischief in relation to property that is a testamentary instrument or the value of which exceeds five thousand dollars

> (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
>
> (b) is guilty of an offence punishable on summary conviction.

(4) Every one who commits mischief in relation to property, other than property described in subsection (3),

> (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
>
> (b) is guilty of an offence punishable on summary conviction.

Obstruction of Justice:

129 Every one who

(a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

(…) is guilty of

(d) an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(e) an offence punishable on summary conviction.

Other potential Criminal Code offences that could apply to violent protests and other illegal actions include:

- Section 31 breach of the peace
- Sections 63-69 unlawful assemblies and riots; includes wearing a mask or disguise during an unlawful assembly
- Section 127 disobeying a Court order
- Section 175 causing a disturbance
- Sections 265-269 assault and assault causing bodily harm
- Section 270 assaulting a police officer
- Section 351(2) wearing a mask or disguise, with intent to commit an indictable offence
- Section 423(1)(c) intimidation – persistent following
- Section 423(1)(g) watching and besetting